IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1211 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BATULBIBI WD/O.SALIM MAHMED FAKIRMOHAMED

Versus

DELHI GUJARAT GOLDEN TRANSPORTCO.

Appearance:

MR MTM HAKIM for Appellans

NOTICE UNSERVED for Respondent No. 1

MR AJAY MEHTA for Respondent No. 3

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE J.R.VORA

Date of decision: 15/03/2001

ORAL JUDGEMENT (Per : MR.JUSTICE A.R.DAVE)

1. The appellants have challenged the Award dated 11th October, 1984, passed by Motor Accidents Claims Tribunal at Ahmedabad in Motor Accident Claim Petition No. 175 of 1982. The appellants are the claimants who are aggrieved by the said award for the reason that the amount which has been awarded to the appellants on the sad demise of Salim Mahmed Fakirmohamed is on the lower side.

2. Facts giving rise to the present First Appeal and the Motor Accident Claim Petition No. 175 of 1982 in a nutshell are as under :

Deceased Salim Mahmed Fakirmohamed was a rickshaw driver and on 16th June, 1982 around 10.30 p.m., while he was driving his rickshaw with three passengers on Naroda Road, the rickshaw met with an accident with a truck bearing No. RSG 3895, which came from the opposite side and on account of the accident, the truck fell on the rickshaw and the rickshaw was crushed in the accident and Salim Mahmed died. In the circumstances, the appellants filed Motor Accident Claim Petition No. 175 of 1982 before the Motor Accidents Claims Tribunal, Ahmedabad. After considering the evidence, the Tribunal awarded a sum of Rs.1,08,500/- with interest thereon at the rate of 6% from the date of filing of the petition till realisation of the amount awarded. Rs. 90,000/ awarded towards dependency benefits, Rs. 7,500/- were awarded for the loss of expectancy of life of the deceased; Rs. 10,000/- were awarded for the damage caused to the rickshaw and Rs. 1,000/- were awarded for funeral and other incidental expenses. Thus, in all, a sum of Rs. 1,08,500/- was awarded by the Tribunal to the appellants herein.

3. Learned Advocate Shri Hakim appearing for the appellants has submitted that the amount awarded by the Tribunal is on the lower side and the Tribunal ought to have awarded Rs. 1,50,000/- to the appellants. It has been submitted by him that the deceased was earning substantial amount and, therefore, the amount awarded ought to have been on the higher side. It has been submitted by him that the deceased had purchased his own rickshaw and for that purpose he had borrowed money from Bank of Baroda as well as from his brother Sabir Mohmad. The amount of Rs. 8,000/-, which had been borrowed from Bank of Baroda in September, 1978 had been repaid by December, 1981. Thus, the deceased was not only

maintaining his family from the amount earned by him from rickshaw driving but he had also paid the amount which he had borrowed from Bank of Baroda as well as from his brother within a short span of about three years. Thus, it has been submitted by learned advocate Mr Hakim that the income of the deceased was not only Rs. 50/- per day but it was much more than that.

4. Thereafter, the learned Advocate has submitted that the Tribunal has made an error in considering the multiplier of 15 though the age of the deceased was 22 years. It has been submitted by him that looking to the law laid down by the Supreme Court in the case of U.P. STATE ROAD TRANSPORT CORPORATION vs. TRILOK CHANDRA, reported in 1996 (3) GLR 136, higher multiplier could have been awarded. According to him, it was open to the Tribunal to take into account the multiplier of 18 while awarding the compensation but the Tribunal had only considered the multiplier of 15, which is on the lower side.

5. The learned Advocate has also submitted that the Tribunal materially erred while not considering the future prospects of the deceased. It has been submitted by him that the deceased had a plan to leave the country for Saudi Arabia so as to work as a mechanic there. The deceased had also procured his Passport and was doing the needful for leaving the country. In that event, he would have earned more money as a Mechanic. Even other wise, with passage of time, the deceased would have earned more and that fact had been altogether ignored by the Tribunal.

6. Lastly, the learned Advocate has submitted that while calculating the amount of dependency, the Tribunal has materially erred. The Tribunal had taken the figure of Rs. 500/- per month for the purpose of determining the dependency though the said amount ought to have been on the higher side as the income of the deceased was around Rs. 1,500/- per month.

7. On the other hand, learned Advocate Shri Ajay Mehta appearing for the respondent Insurance Company has submitted that the award of the Tribunal is absolutely just and proper and the amount of compensation which has been awarded to the appellants is also just and adequate.

8. So far as the income of the deceased is concerned, it has been submitted by learned Advoate Shri Mehta, appearing for respondent No.3 - Insurance Company

that the deceased was a rickshaw driver and even if his gross receipts might have been Rs.50/- per day, his actual income per day could not be Rs.50/- because it has been said in the evidence by appellant No.1 Batulbibi, widow of the deceased (Exh.25) that the deceased was giving approximately Rs.300 to 400 for household expenses to appellant No.1 per month. It has been submitted by learned Advocate Shri Metha that even on the basis of evidence of the widow of the deceased, the total income of the deceased was not more than Rs.400/- per month, other wise, he would have given more amount for the household expenses to his wife.

9. It has been submitted by the learned advocate that though net income of the deceased was only Rs. 300/- to 400/- per month, the Tribunal has considered the income of the deceased as Rs. 500/- per month for the purpose of considering dependency benefits. This fact clearly denotes that the Tribunal has taken into account the prospects of future earning of the deceased and only for that reason the multiplier of 15 was taken into account by the Tribunal. As a matter of fact, on the basis of the evidence led by appellant No.1 (Exh. 25) the dependency amount could not have been Rs.500/- but it could have been less than Rs.300/- because out of the total income given by the deceased to his widow, 1/3 amount should have been deducted, and in that case, the dependency amount would have been much less than Rs.350/-. It has been submitted by learned Advocate Mr. Mehta that the Hon'ble Supreme Court has observed in Trilokchand's case (supra) that the maximum multiplier should never be more than 18 but it doesn't mean that the multiplier should be 18 in all cases. It has been submitted that selection of multiplier depends upon the facts of each case, and looking to the facts of the present case, the amount of compensation which has been awarded by the Tribunal is just and proper.

10. We have heard the learned advocates and have also perused the relevant documents and evidence. We are of the view that by and large the amount which has been awarded by the Tribunal is just and proper. It is true that the Tribunal has awarded Rs.90,000/- towards dependency benefits on the basis that income of the deceased was Rs. 500/- per month. It is not in dispute that appellant No.1, namely, widow of the deceased has stated in her cross-examination that the deceased used to give a sum of Rs. 300/- to Rs.400/- per month for household expenses to her and, therefore, it appears that the net income which was available to the deceased after making the expenditure which was necessary for the

purpose of running his rickshaw was of Rs.300/- to Rs. 400/- per month. In fact, in spite of this fact, the dependency benefit was considered at Rs.500/- per month by the Tribunal. It appears that while determining the higher amount, due care has been taken by the Tribunal to consider the future prospects, which the deceased might be having. The averments with regard to obtaining passport and leaving the country for better prospects elsewhere are not relevant for the reason that had the deceased been a mechanic, he would have helped his elder brother in the business of repairing of vehicles because his elder brother was earning a substantial amount by repairing vehicles.

11. We are of the view that the Tribunal has rightly awarded a sum of Rs. 90,000/- towards dependency benefit to the appellants and, therefore, we do not think it proper to increase or decrease the multiplier or income. So far as the amount which has been awarded under the head of loss of expectancy of life of the deceased is concerned, the Tribunal has awarded little less amount. A sum of Rs. 7,500/- has been awarded under the head of loss of expectancy of life of the deceased. The amount ought to have been Rs. 10,000/-. Thus, we are of the view that an amount of Rs. 2,500/- is required to be awarded more under the said head.

12. In the circumstances, the award is directed to be modified from Rs. 7,500/- to Rs. 10,000/- towards loss of expectancy of life of the deceased. Thus, the amount of Rs. 2,500/- should be awarded more to the appellants. The Appeal is allowed. The award is directed to be modified to the above said extent. No order as to costs.

13. The Tribunal has awarded interest @ 6% from the date of the application till the date of deposit of the amount awarded. In our opinion, the said rate of interest is on the lower side because even at the relevant time, higher rate of interest was being awarded, we are of the view that the rate of interest should be enhanced from 6% to 9% p.a.

14. The amount shall be paid along with 9% interest thereon to the appellants from the date of the filing of the petition till the date of realisation. The amount shall be deposited by the Insurance Company within four weeks from today and the said amount shall be disbursed amongst appellants No. 1, 2 and 3 in the proportion of 2:1:1 i.e. 50% of the amount shall be paid to the widow whereas 25% of the amount shall be paid to each child.

15. The Appeal is thus allowed to the above extent with no order as to costs and the award shall be modified accordingly.

(A.R. Dave, J.)

(J.R. Vora, J.)

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